

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

THE RELIGIOUS SISTERS OF MERCY, *et al.*,

Plaintiffs,

v.

XAVIER BECERRA, Secretary of United
States Department of Health and Human
Services, *et al.*,

Defendants.

No. 3:16-cv-386

**DECLARATION OF
THOMAS B. BAIR**

THE CATHOLIC BENEFITS ASSOCIATION; *et al.*,

Plaintiffs,

v.

XAVIER BECERRA, Secretary of United
States Department of Health and Human
Services, *et al.*,

Defendants.

No. 3:16-cv-432

1. I was admitted to the Bar of the State of North Dakota on September 29, 1985, and have practiced law in North Dakota continuously since that time, a period of over thirty-seven years.

2. North Dakota is a small state with a population of under 780,000.

3. My practice includes transactional work and litigation. I have advocated on behalf of clients in the North Dakota state courts at all levels and in the United States District Court for North Dakota.

4. My practice has included serving as lead outside counsel for various religious ministries, including the Diocese of Bismarck. This work requires that I keep informed regarding church-state and religious liberty issues, including the identity of lawyers serving religious institutions in North Dakota. From time-to-time, issues materialize in these areas that require legal knowledge beyond my level of expertise. My first call is to Martin Nussbaum, who invariably offers prudent and expert advice. It becomes quite clear quite quickly that the members of the Nussbaum firm are preeminent in these areas of the law.

5. I have reviewed the published opinions in favor of the Catholic Benefits Association in its litigation against the United States Department of Health and Human Services and the United States Equal Opportunity Commission, specifically, *Religious Sisters of Mercy v. Azar*, 513 F.Supp.3d 1113 (D. N.D. 2021) and *Religious Sisters of Mercy v. Becerra*, 55 F.4th 583 (8th Cir. 2022).

6. I do not know and am not aware of any attorney or law firm in North Dakota that could have undertaken advocacy on the level of the Nussbaum firm in obtaining the result that Martin Nussbaum and his team acquired in these cases. These cases involve a sophistication and expert understanding of many issues. These include religious liberty constitutional litigation, complex issues related to HHS regulations implementing the Affordable Care Act, litigation across the country related to those regulations, current EEOC interpretations of Title VII, Catholic ethics with regard to the emerging medical practice of assisting with gender transition, and federal court practice and procedure.

7. I know of no lawyer or firm in North Dakota with knowledge or experience in these areas and no lawyer or firm in North Dakota that could have successfully undertaken this litigation. There is no lawyer or law firm in the state of North Dakota with anywhere near the knowledge and expertise of the Nussbaum firm related to these issues.

I declare under penalty of perjury that the foregoing is true and correct.

Date:

11-27-2023


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